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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,633	11/21/2003	Patrick L. Iversen	50450-8032.US02	3642

22918 7590 10/23/2006

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EXAMINER

MCGARRY, SEAN

ART UNIT PAPER NUMBER

1635

DATE MAILED: 10/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center"><b>Office Action Summary</b></p>	<p>Application No.</p> <p>10/719,633</p>	<p>Applicant(s)</p> <p>IVERSEN, PATRICK L.</p>	
	<p>Examiner</p> <p>Sean R. McGarry</p>	<p>Art Unit</p> <p>1635</p>	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 July 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 15-22,24 and 26-29 is/are pending in the application.
- 4a) Of the above claim(s) 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-22,24 and 27-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| <p>1) <input type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)</p> <p>    Paper No(s)/Mail Date <u>10/04/06</u>.</p> | <p>4) <input type="checkbox"/> Interview Summary (PTO-413)</p> <p>    Paper No(s)/Mail Date. _____.</p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application</p> <p>6) <input type="checkbox"/> Other: _____.</p> |
|---|---|

### **DETAILED ACTION**

Applicant's election with traverse of Group II in the reply filed on 7/31/06 is acknowledged. The traversal is on the ground(s) that The invention includes 10 nucleic acid sequences and that the sequences are few enough such that no burden on the office exists and that it is improper for the office to refuse to examine that which applicant regards as their invention. This is not found persuasive because since the nature of sequence searches places a large burden on the office. The time and resources to search sequences places a large burden on the office to conduct and for the examiner to review. The office therefore has determined that one sequence will be searched in the instant application. Applicant argues that it is improper for the office to refuse to examine that which applicant regards as their invention, however it has been determined and shown by the office that the members of the Markush group do indeed lack unity. Applicant argues that since the target nucleic acid is the same the invention s each share a common structure. It is noted that the target is not claimed and each nucleic acid recited in the claims has a different structure as explained in the restriction requirement. Applicant has not shown how the recited nucleic acids contain a shared structure, for example.

The requirement is still deemed proper and is therefore made FINAL.

Claim 26 and all sequences other than SEQ ID NO: 30 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 7/31/06.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15-22, 24, and 27-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 29 is unclear since claim 12, from which claim 29 depends, has been canceled.

Claim 15 recites "including a targeting nucleic acid sequence at least 10 nucleotides in length. . ." and further "wherein the targeting sequence is selected from the group consisting of SEQ ID Nos: . . ." The latter recitation being added by amendment. The language is unclear within the context of the claimed invention since each member of the recited group is 22 nucleotides in length. It is unclear then whether one is to select 10 nucleotides from the sequences or if it is intended that the nucleic acid be one of the recited nucleic acids. Claims 16-22, 24, and 26-28 are rejected as they depend from claim 15. Claims 21 and 22, however also recite ranges that are inconsistent with the length of the recited SEQ ID. The range recited in the claim is

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unclear since one cannot have a nucleic acid that is 10 nucleotides in length and include the recited SEQ ID. Of the elected invention.

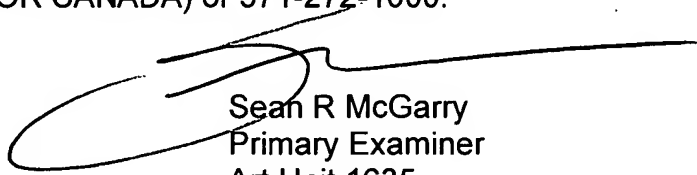
Claim 24 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Please see rejection above. If claim 24 is limited only to SEQ ID NO: 30 then it is or is not complementary to a gram negative or a gram positive 16s RNA.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sean R. McGarry whose telephone number is (571) 272-0761. The examiner can normally be reached on M-Th (6:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Paras can be reached on (571) 272-4517. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Sean R McGarry  
Primary Examiner  
Art Unit 1635